UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

PAE AVIATION AND TECHNICAL SERVICES LLC

and **Case 28–CA–203755**

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, LOCAL LODGE 2949, AFL-CIO

Lisa J. Dunn, Esq., for the General Counsel.

Edward M. Cherof and
Jeffrey W. Toppel, Esqs. (Jackson Lewis P.C.),
for the Respondent.

DECISION

STATEMENT OF THE CASE

MARA-LOUISE ANZALONE, Administrative Law Judge. I heard this case in Tucson, Arizona, on February 13–15, 2018. This case was tried following the issuance of a Complaint and Notice of Hearing (the complaint) by the Regional Director for Region 28 of the National Labor Relations Board on November 14, 2017. The complaint was based on an unfair labor practice charge filed by Charging Party International Association of Machinists and Aerospace Workers, Local Lodge 2949, AFL–CIO (the Union) on August 3, 2017, against Respondent PAE Aviation and Technical Services LLC (Respondent). The General Counsel alleges that Respondent violated Section 8(a)(1) of the National Labor Relations Act, as amended, 29U.S.C. Sec. 151, et. seq. (the Act), by denying employee Jonathan Boey (Boey) his requested *Weingarten* representative, violated Sections 8(a)(3) and 8(a)(1) of the Act by subsequently suspending him for engaging in union activity, and violated Sections 8(a)(5) and (1) of the Act by refusing or unreasonably delaying in providing the Union with certain requested information. Respondent, by its answer to the complaint, denies committing the alleged unfair labor practices.

At trial, all parties were afforded the right to call, examine, and cross-examine witnesses, to present any relevant documentary evidence, to argue their respective legal positions orally, and

to file post-hearing briefs.[1] The General Counsel and Respondent filed post-hearing briefs, which have been carefully considered. Accordingly, based upon the entire record herein,[2] including the post-hearing briefs and my observation of the credibility of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union has been a labor organization within the meaning of Section 2(5) of the Act. Accordingly, I find that this dispute affects commerce and that the National Labor Relations Board (the Board) has jurisdiction of this case, pursuant to Section 10(a) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

Respondent, a government contractor, provides aircraft maintenance services to Customs and Border Protection at Davis-Monthan Air Force Base in Tucson, Arizona (Davis-Monthan). The Union is the collective-bargaining representative for a unit of employees employed by Respondent at Davis-Monthan,[3] including Boey, who is an aircraft mechanic and member of the Union. At all relevant times, a collective–bargaining agreement was in effect governing the terms and conditions of employment of the unit employees (the CBA). (GC Exh. 2; Tr. 28, 29, 112, 113, 138, 159, 184, 237, 265)

Allegations Involving Boey

As noted, the General Counsel contends that Respondent issued an unwarranted suspension to Boey based on his union activities, and additionally denied him his requested *Weingarten* representative. Respondent denies all allegations and asserts that Boey's suspension was based on his refusal to comply with a work directive.

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[1] Abbreviations used in this decision are as follows: "Tr." for transcript; "GC Exh.__" for General Counsel's Exhibit; "R. Exh. __" for Respondent's Exhibit; and "R. Br. at __" for Respondent's post-hearing brief.

[2] I note and correct the following inaccuracies in the transcript: the phrase, "Let's shoot it up," appearing at p. 17, ll.14–15, is corrected to read, "We're suited up"; and the term, "Weinman [sic]" appearing at p. 120, l.10, is corrected to read, "*Weingarten.*"

[3] The unit consists of "[a]ll full-time aircraft maintenance and avionic technicians [employed by Respondent] at Davis-Monthan Air Force Base, Arizona; excluding all office clerk employees, professional employees, managerial employees, guards and supervisors as defined in the Act."

A. Relevant factual background[4]

1. Airplane logbooks and the "logbook checklist"

Following the performance of maintenance work on an aircraft, the mechanic responsible for the work is required to document it by completing and signing an airplane logbook. Specifically, the mechanic's logbook entries indicate the exact nature of the inspection and maintenance work s/he performed on the aircraft, and the mechanic must sign a "flight record sheet" verifying this information. This process documents that the aircraft has received the appropriate inspections and maintenance and is therefore airworthy before it is released to a flight crew for its mission. (Tr. 468–470, 490–491)

In mid-2015, Customs and Border Protection representatives complained to Respondent that certain inspections were not being properly documented in logbooks, resulting in aircraft potentially being released for missions in unsafe condition.[5] In response, Respondent conducted training on proper logging procedures in June 2015; it is undisputed that Boey attended this training. Later, in October 2015, Respondent implemented a stream-lined, one-page "logbook checklist." The purpose of the checklist was to simplify the logging process and ensure that the mechanic was properly documenting their inspection. It is undisputed that the checklist was effective in this regard; following its implementation, the instance of inaccurate documentation was reduced over 75 percent. (Tr. 121, 210–211, 494–495)

All mechanics working on active aircraft, but not all mechanics in Respondent's Davis-Monthan operation, are required to complete the log book checklist. On the day shift, during which some mechanics work in an inspection role, it is customary for only the lead mechanic on an aircraft to complete the checklist. Prior to July 2017, Boey worked in such an inspection role and was therefore not required to complete the checklist. Fewer mechanics work on the night shift, making it more likely that a mechanic will be expected to complete the checklist. As Respondent's Quality Control Supervisor Steve Wooley (Wooley) explained, whether a mechanic will be required to sign a checklist "varies day to day with the jobs that are going on and the flights and missions that we're doing. So the checklist might not be used every day by every mechanic." (Tr. 191, 211–212, 227, 469, 489–491)

Around the same time as Respondent's roll-out of the logbook checklist, Boey attended a facility-wide training conducted by Respondent's Project Management Office (PMO), which is responsible for managing Respondent's contract with Customs and Border Protection.

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[4] Certain of my findings are based on witness credibility. A credibility determination may rest on various factors, including "the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole." *Hills & Dales General Hospital*, 360 NLRB 611, 617 (2014), citing *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001). In making credibility resolutions, it is well established that the trier of fact may believe some, but not all, of a witness' testimony. *NLRB v. Universal Camera Corp.*, 179 F.2d 749 (2d Cir. 1950). Where there is inconsistent evidence on a relevant point, my credibility findings are incorporated into my legal analysis.

[5] For example, the failure to document an aircraft's flight hours could result in "overflight" (i.e., the aircraft being flown while being overdue for inspections). (Tr. 482, 492)

According to Boey, employees attending the presentation were warned not to use documents that were not "approved" and were specifically admonished as follows:

> if it isn't an approved document, you're not supposed to use it, you're not supposed to touch it, and basically if there's no policy or document number to govern it, that it wasn't to be used.

(Tr. 208) The record indicates that Boey attributes this statement to one or two individuals: Fred Janneck (Janneck), who serves as aircraft maintenance manager for Respondent's entire Customs and Border Protection program and David Harvey (Harvey), who serves in a human resources role at PMO. At hearing, the parties stipulated that Janneck and Harvey are each supervisors under Section 2(11) of the Act. (Tr. 28, 121; R. Exh. 3)[6]

2. Boey's refusal to complete the logbook checklist

The operative facts of Boey's discipline allegation occurred after he was transferred from the day to the night shift in June 2017.[7] On August 8, lead mechanics Raul Valezzi (Valezzi) and Eric Walton (Walton)[8] unsuccessfully attempted to get Boey to complete a logbook checklist for an aircraft on which he had worked. In response to their instruction, Boey stated that "no one on day shift does this," that the checklist was not a "PAE-approved form" and that he would not complete it. Boey's refusal was brought to the attention of upper management the same day, and Site Manager William Phillips (Phillips) instructed Valezzi to document the incident via email. Maintenance Operations Supervisor John Neely (Neely), who was copied on Valezzi's email report, responded, "this will need to be covered tomorrow." There is no indication as to what, if anything, was "covered" the following day. (Tr. 172–173, 183–184, 193, 194, 212; GC Exh. 16)

On August 16, Valezzi again attempted to get Boey to sign a checklist for the aircraft he was working on; Boey again stated that he had never been required to fill out a checklist on the day shift and did not know how to do so. Valezzi responded that the checklist was simple to complete and that Boey had signed a "read and sign" regarding filling out the checklist. A "read and sign" (also referred to as a "read and initial") is a form whereby a PAE employee acknowledges that he understands and will comply with a newly implemented procedure). Referring to the PMO presentation he had attended two years earlier, Boey stated that he did not believe he had signed such a document and that he had been told by a "higher authority" not to use documents that did not have "proper approval." (Tr. 147, 175, 194–195; GC 17)

Ten minutes later, Maintenance Supervisor John Kautz (Kautz), with Valezzi present, spoke with Boey. Kautz asked Boey if he had completed the checklist, and Boey responded that he had been instructed by two individuals from PMO—Harvey and Janneck—to "do no company paperwork without a policy." He then repeated his request for a copy of his "read and sign" form related to the checklist. Kautz told Boey that the checklist had in fact been created and

[6] I do not credit Boey's assertion that the individual in question was named "Mr. Love." (See GC Exh. 22) There is no indication that such an individual exists, and the weight of the evidence indicates that Boey in fact attributed the statement to either Janneck or Harvey.

[7] Unless otherwise noted, all dates herein refer to the year 2017.

[8] Neither Valezzi nor Walton is alleged to be a supervisor under Section 2(11) or an agent under Section 2(13).

approved by PMO. Kautz' note to file regarding the day's events states that Boey responded as follows:

> He told me the only way he will do it, is if I put it in writing for him and that he will give that straight to the Union with it.

(GC Exh. 17) While Kautz' syntax is somewhat confusing, it is clear that he believed: (a) Boey was refusing to comply with his directive unless it was put in writing, and (b) he intended, with the Union's assistance, to challenge any such written directive.[9] Valezzi's written report of the incident corroborates Kautz, stating: "Jonathan still refused and warned Mr. Kautz that he was 'going to the [U]nion with this.'" Id. At this point, Kautz left and telephoned Site Manager Phillips "to inform him of the situation." Neither man testified as to the substance of that conversation.

Shortly afterwards, Kautz called Boey to his office, with leads Walton and Valezzi. Kautz asked Boey whether he was willing to fill out the checklist. Boey repeated his request for his "read and sign" and Kautz responded that it was in Phillips' locked office, but that he would get him a copy. Kautz then told Boey that he could either complete the checklist or speak with "upper management" in the morning. Boey responded that he would pursue the latter. It is undisputed that Kautz never provided Boey with his "read and sign" form; according to Kautz, he never followed up because, as of the following day, Boey's situation was handled by a higher level of management. At hearing, no party offered a copy of the "read and sign." (Tr. 145–149, 196; GC Exh. 17)

The following day, a clearly exasperated Phillips emailed Harvey for human resources guidance on how to address Boey's conduct. Attaching Kautz and Valezzi's written accounts of the prior day's events (along with a statement by a third lead), Phillips stated as follows:

> See below and attached in reference to the latest act of defiance by Jonathan Boey. He's now on Night shift and refuses to do what Leads And Management asked him to do. Claiming unless there is a TS # at the bottom of everything he's asked to do, he doesn't have to comply with ANY of it. Then demanding the Supervisor TELL him in writing to do it. Further stating and threatening to John Kautz, that he'll take said letter to the Steward for action against the company.
>
> Our checklist that was approved by Fred Janneck, is used by everyone to scrub the Green Books before Pilots receive them. This is an extra set of eyes to ensure we bounce EMRK's off the Aircraft Discrepancy Book (Green Book), to further ensure we don't overfly or forget something. NO ONE has a beef with it but him. Blatant insubordination. I'd like to proceed to DAF.

(GC Exh. 18) "DAF" refers to "Disciplinary Action Form." (See GC Exh. 24)

[9] Oddly, Boey himself denied telling management that he planned to take the written directive to the Union. (Tr. 223) I did not find this portion of his testimony particularly credible, however, as he appeared quite distracted and anxious during this portion of Counsel for the General Counsel's questioning. In any event, it is obvious that Kautz either truly believed Boey to have made the statement or he and Valezzi fabricated it for the purpose of reporting it to upper management.

August 16 was not the first time Boey had demonstrated his willingness to challenge management with the Union's assistance. In fact, during the prior 3 months, he had done so several times. The first was in early June, when he grieved the denial of 8 hours of overtime pay; this grievance was pending on August 16, and would later be resolved in Boey's favor in October 2017. In early to mid-July, Boey successfully avoided discipline after the Union convinced management that the discipline was untimely under the parties' contract. Finally, in late July, the Union assisted Boey in getting a time-off request approved. In each of these instances, Boey specifically involved aircraft mechanic Stephanie Karelis (Karelis), who has served as chief steward for the unit employees for approximately 10 years. (Tr. 71, 75–76, 115, 117, 185–191, 217–218, 264–267, 332–337; GC Exh. 14, 15)

On August 17, Boey again sought Karelis' assistance. They discussed his concerns about completing the logbook checklist, and Boey said that he was going to attempt to obtain from management a copy of the "policy" regarding the checklist. According to Karelis, whose shift was scheduled to end approximately ½ hour following their conversation, Boey said, "if he needed me, he would come get me." There is no evidence, however, that Boey arranged for Karelis to remain at work or in the vicinity after her shift in order to assist him. (Tr. 345)

3. Boey's *Weingarten* Meeting

Shortly after 3:00 p.m. on August 17, Boey was summoned to a meeting with Maintenance Manager Raymond Donahue and Maintenance Supervisor Robert Shelton. At the outset of the meeting, Donahus asked Boey if he wanted a union representative present, to which Boey responded, "yes." The only steward on duty at the time was Mark Hansford (Hansford), a steward who works on the night shift. Hansford, who had only served as a steward since early 2017, was brought into the room. Boey then stated that he wanted Karelis, not Hansford, to serve as his steward. (Tr. 112, 123–124, 198–200, 220, 237–239, 246)

At the time of the meeting, Karelis' shift had been over for at least ½ hour, and management made no attempt to determine her whereabouts and/or availability. Donahue told Boey that Karelis was not at the facility and that he was required to write a statement regarding his refusal to complete the checklist. Stating that Boey could have until the close of his shift the following day in which to complete the statement, during which time he was free to meet with Karelis, Donahue added that he preferred that Boey submit the statement by the end of his current shift. Hansford played an active role in the meeting, requesting that Respondent provide copies of other employees' completed checklists, and also suggesting that Boey receiving no discipline. (Tr. 121–125, 219, 246–249, 253–254, 257)

Prior to the August 17 meeting, it is undisputed that Respondent had requested that Karelis perform steward duties during her off-duty hours, either by coming to work outside her shift or staying beyond her shift's end. None of these cases, however, involved *Weingarten* meetings in which another steward was already available. (Tr. 126–127, 129, 397–400)

4. Boey's Suspension

On August 20, Phillips summoned Boey to his office. With Hansford present, Phillips informed Boey that he was suspended until further notice. Boey asked the reason for his suspension, to which Phillips responded "insubordination." Phillips was resolute in his

testimony that the decision to suspend Boey pending investigation was not his; instead, he explained, he was ordered to do so by Harvey, who did not testify. (Tr. 98–100, 206, 251–253)

On August 26, Respondent convened a Disciplinary Review Board (DRB) regarding Boey.[10] Such a body, also referred to a "disciplinary review committee," only meets when an employee is being considered for discharge. The August 26 DRB consisted of Kautz, Donahue, Phillips, Janneck and Harvey, along with three additional labor relations/human resources representatives: Scott Ryan (Ryan), Michael Redmond (Redmond) and Donald Smith (Smith). Of the DRB members still currently employed at the time of the hearing, only Kautz, Donahue and Phillips testified. (Tr. 100–102, 459, 499)

Prior to the meeting, Phillips provided the DRB members with a packet of documentation regarding Boey's refusal to complete the checklist. In addition to Boey's August 17 statement, the packet included numerous copies of checklists completed by other mechanics, as well as:

- Kautz' August 16 email (relating Boey threat to take the checklist issue "straight to the [U]nion");
- Valezzi's August 16 report (noting that Boey had warned Kautz that he was "going to the union with this"); and
- Phillips' August 17 email (relating Boey's threat to take information to steward for "action against the company").

(R. Exh. 3; Tr. 476, 495)

The details of how this meeting proceeded are somewhat sketchy; according to Phillips, he, along with Kautz and Donahue, advocated for Boey to be discharged, but this position was overruled by the others on the panel. In any event, Respondent's minutes of the DRB meeting indicate that, after a brief discussion, "the Board voted unanimously" for Boey to be issued a 5-day suspension. (Tr. 133) According to the minutes (which were drafted by Ryan), Boey was suspended:

> due to his violation of the company policies: #2 Unsatisfactory quality or quantity of work and #12 Inability or unwillingness to work harmoniously with others, noncompliance company policies and *previous disciplinary actions*.

(R. Exh. 3) (emphasis added). It is undisputed that, prior to this suspension, Boey had received no prior discipline. (Tr. 499)

On August 27, Phillips met with Boey and handed him a DAF that listed the dates of his suspension as August 20 through August 24. The document is dated August 24 and contains Phillips' signature dated the following day. Thus, it appears that the document was finalized on

[10] That the meeting occurred on this date is established by Respondent's own minutes of the meeting. I therefore do not credit Phillips' uncorroborated testimony that it occurred the day before.

August 25, the day *before* the DRB meeting during which Phillips claimed to have argued for Boey to be discharged, not merely suspended.

5. Contractual language and Respondent policies relied upon by the General Counsel

The General Counsel contends, inter alia, that Boey's refusal to execute the logbook checklist amounted to an attempt on his part to enforce his rights under the parties' CBA. Accordingly, a discussion of certain CBA provisions, as well as Respondent's policies, is appropriate. The first CBA provision obligates Respondent to provide notice to the Union of new work rules, which the Union may challenge as unreasonable.[11] The second provision provides that Respondent will give 7 days' notice of any new rule or policy, and further states that "no employee will be disciplined until this obligation is met." (GC Exh. 2 at 32, Art. 27 § 5)

Respondent maintains numerous written policies, and even maintains policies governing the maintenance of its own policies. Specifically, since January 1, 2013, Respondent has maintained a written policy entitled "Policies and Procedures," which contains the following provision:

> 2.2 While it is acceptable to convey non-recurring requirements by memorandum of similar means, recurring requirements should be documented in the form of a policy or procedure.

(GC Exh. 27 at 1) An identical provision is contained within a related policy, entitled, "Document Control Numbering." (GC Exh. 28 at 1) Karelis testified that, based on this provision, if Respondent requires unit employees to complete written forms, "there should be some sort of documentation" directing and authorizing employees to fill out the form. (Tr. 339; GC Exhs. 27, 28) There is no evidence that either of the policies containing the section 2.2 language was the result of Respondent negotiating with the Union, or that any provision of the CBA obligates Respondent to "codify" its rules, regulations and policies in writing.

B. Analysis

1. Boey's suspension

The General Counsel alleges that Respondent suspended Boey for engaging in union activity in violation of Sections 8(a)(3) and (1) of the Act. In the alternative, the General Counsel alleges that Boey was suspended for attempting to enforce his rights under the collective bargaining agreement. Respondent denies all allegations, asserting that, notwithstanding any union activity on Boey's part, it would have suspended him in any event based on his repeated refusal to complete the logbook checklist.

I agree with the General Counsel and find that Respondent violated the Act based on the General Counsel's primary, but not its alternate, theory of liability.

[11] This provision reads as follows: "[t]he Union and the employees shall be notified prior to enforcement of new rules or changes in existing work rules. The Union reserves the right to pursue through the Grievance and Arbitration procedure, as spelled out in this agreement, rules which it believes to be unreasonable." See GC Exh. 2 at 6–7, Art. 5 § 2.

a. The Applicable Law

Section 8(a)(3) of the Act provides, in relevant part, that it is "an unfair labor practice for an employer by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization." 29 U.S.C. § 158(a)(3). Under Section 8(a)(3), the prohibition on encouraging or discouraging "membership in any labor organization" has long been held to include, more generally, encouraging or discouraging participation in concerted or union activities. *Radio Officers' Union v. NLRB*, 347 U.S. 17, 39–40 (1954); *NLRB v. Erie Resistor Corp.*, 373 U.S. 221, 233 (1963).

As a preliminary matter, while Boey's alleged insubordination arose in connection with his announcement that he planned to enlist the Union's support to challenge the order he refused, I do not find that his refusal to sign the logbook necessarily occurred in the course of protected conduct, such that an analysis under *Atlantic Steel* would be appropriate. Compare *Ozburn-Hessey Logistics, LLC*, 366 NLRB No. 177, slip op. at 5 (2018) (applying *Atlantic Steel* standard to employee's refusal to return to *Weingarten* meeting, which was "inextricable intertwined with his protected request for union representation") (citing *Atlantic Steel Co.*, 245 NLRB 814, 816 (1979)). Here, Boey could have, as Respondent puts it, "obeyed first and grieved later," meaning that his refusal to sign the checklist was not part-and-parcel with his effort to enlist the Union's assistance to challenge the checklist requirement. Therefore, I find that an analysis under *Wright Line* is appropriate.[12]

Under that framework, the General Counsel must prove by a preponderance of the evidence that an employee's protected concerted activity was a motivating factor (in whole or in part) for the employer's adverse employment action. "The elements required to support such a showing are union or protected concerted activity, employer knowledge of that activity, and union animus on the part of the employer." *Libertyville Toyota*, 360 NLRB 1298, 1301 (2014). Proof of such unlawful motivation can be based on direct evidence or can be inferred from circumstantial evidence based on the record as a whole. *Robert Orr/Sysco Food Services*, 343 NLRB 1183, 1184 (2004), enfd. 184 Fed. Appx. 476 (6th Cir. 2006); *Embassy Vacation Resorts*, 340 NLRB 846, 848 (2003).

An employer's antiunion motivation may be established by evidence such as managerial admissions of hostility toward employee union activities, the timing of an adverse action, departures from past practice, disparate treatment of discriminatees, shifting, inconsistent or irrational explanations for the treatment of discriminatees, evidence that the employer's proffered explanation of the adverse action is pretext, and other contemporaneous unfair labor practices. *Kitsap Tenant Support Services, Inc.*, 366 NLRB No. 98, slip op. at 14 (2018); *Novato Healthcare Center*, 365 NLRB No. 137, slip op. at 16 (2017); *Lucky Cab Co.*, 360 NLRB 271, 274 (2014). In addition, the Board has long recognized that "'the timing of the [employer's conduct] is strongly indicative of animus.'" *A.S.V., Inc.*, 366 NLRB No. 162, slip op. at 36 (2018) (quoting *Electronic Data Systems,* 305 NLRB 219, 220 (1991), enfd. in relevant part 985 F.2d 801 (5th Cir. 1993)); see also *N.C. Prisoner Legal Services,* 351 NLRB 464, 468 (2007), citing *Davey Roofing Inc*., 341 NLRB 222, 223 (2004) (timing of employer's action in relation to protected activity provides reliable evidence of unlawful motivation).

[12] *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

If the General Counsel makes this initial showing, the burden shifts to the employer to demonstrate by a preponderance of the evidence that the same action would have taken place even in the absence of the protected conduct. See *Shamrock Foods Co*., 366 NLRB No. 117, slip op. at 26–27 (2018), and cases cited therein. In this regard, it is not sufficient for the employer merely to produce a legitimate basis for the adverse employment action or to show that the legitimate reason factored into its decision. *T. Steele Construction, Inc*., 348 NLRB 1173, 1184 (2006). Instead, it "must persuade that the action would have taken place absent protected conduct by a preponderance of the evidence." *Weldun International,* 321 NLRB 733 (1996) (internal quotations omitted), enfd. in relevant part 165 F.3d 28 (6th Cir. 1998); see *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983) (approving *Wright Line* and rejecting employer's claim that its burden in making out an affirmative defense is met by demonstration of a legitimate basis for the adverse employment action).

That said, under the *Wright Line* framework, as part of his initial showing, the General Counsel may also offer proof that the employer's reasons for the personnel decision were pretextual. *Con-Way Freight, Inc.*, 366 NLRB No. 183, slip op. at 2–3 (2018) (citing *Pro-Spec Painting, Inc.*, 339 NLRB 946, 949 (2003); *National Steel & Shipbuilding Co.*, 324 NLRB 1114, 1119, fn. 11 (1997)). Indeed, where the employer's proffered reason is shown to be pretextual, "the factfinder may not only properly infer that there is some other motive, but 'that the motive is one that the employer desires to conceal—an unlawful motive….'" Id. (quoting *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966) (citation omitted). Thus, as the Board recently reiterated:

> A finding of pretext defeats any attempt by the Respondent to show that it would have discharged the discriminatees absent their union activities. This is because where "the evidence establishes that the reasons given for the Respondent's action are pretextual—that is, either false or not in fact relied upon—the Respondent fails by definition to show that it would have taken the same action for those reasons, absent the protected conduct, and thus there is no need to perform the second part of the *Wright Line* analysis.

Con-Way Freight, Inc., 366 NLRB No. 183, slip op. at 2–3 (citing *Golden State Foods Corp.*, 340 NLRB 382, 385 (2003); *Limestone Apparel Corp.*, 255 NLRB 722 (1981)). It follows that "the mere existence of a valid ground for [discipline] is no defense to an unfair labor practice charge if such ground was a pretext and not the moving cause." Id. at 3 (quoting *NLRB v. Yale Mfg. Co.*, 356 F.2d 69, 74 (1st Cir. 1966)), enfd. 182 F.3d 622 (8th Cir. 1999) (citation omitted).

b. The General Counsel's initial *Wright Line* case

For the following reasons, I find the General Counsel has met his initial burden of establishing that Boey's union activity was a substantial or motivating factor for Respondent's decision to suspend him:

First, the General Counsel clearly established that Boey engaged in protected, union-related activity during the 2 months leading up to his suspension. As noted, he had successfully avoided prior discipline by involving his union steward, had involved the Union in obtaining requested time off, and had filed an overtime grievance that was pending at the time he was suspended. On

August 16, Boey did more than merely engage in a refusal to sign the logbook checklist; he threatened to continue his practice of challenging management by involving the Union. Whether the checklist requirement was in fact as objectionable as Boey perceived it, or whether he could have made his case in a "more efficacious or reasonable manner," is not the point. See *Tamara Foods*, 258 NLRB 1307, 1308 (1981) (finding such factors irrelevant to analysis of protected conduct), enfd. 692 F.2d 1171 (8th Cir. 1982), cert. denied 461 U.S. 928 (1983).

Second, the General Counsel has established Respondent's knowledge of Boey's union activity. Phillips was involved in Boey's prior clashes with management and knew he had a penchant for involving the Union in resolving his day-to-day workplace issues. He tellingly characterized Boey's August 16–17 conduct as only the "latest act of defiance" on his part, an apparent reference to his habit of second guessing his superiors. Additionally, it is undisputed that every member of the DRB was on notice that Boey had threatened to involve the Union and take "action against the company."[13] Finally, it is appropriate to impute knowledge of Boey's past grievance filing and reliance on the Union's advocacy to them, as Respondent failed to adduce any facts that would suggest otherwise. See *Airgas USA, LLC*, 366 NLRB No. 92, slip op. at 7 (2018), and cases cited there ("[i]t is well establidshed that the Board imputes a manager's or supervisor's knowledge of an employee's protected concerted activities to the decision-maker, unless the employer affirmatively establishes a basis for negating such imputation").

Finally, the General Counsel has clearly established that Respondent had animus towards Boey's union activities, as plainly demonstrated by Phillips' incense at Boey's announced intention to involve the Union in second-guessing yet another management decision. Animus is additionally inferred through the suspect timing of his suspension—within days of his threat to again enlist the Union's services, something he had done 3 times in as many months. Indeed, that Boey was summarily suspended after being advised that the "read and sign" document he sought—which would have put the entire "checklist" issue to rest—was available and would be provided to him, itself speaks volumes. See *Electronic Data Systems*, 305 NLRB 219, 220 (1991) ("the timing of the [employer's conduct] is strongly indicative of animus"), enfd. in relevant part 985 F.2d 801 (5th Cir. 1993). Moreover, while Respondent argues that the ultimate "ratcheting down" Boey's punishment to a mere suspension serves as evidence of its lack of animus, the record as a whole does not support such a conclusion.[14]

Finally, Respondent's efforts to prop up its decision to suspend Boey with shifting and unsupported explanations are a strong indication of Respondent's unlawful motive and are also highly suggestive of pretext. Phillips initially informed Boey that he was being suspended for

[13] To the extent that Boey himself denied making such a threat, I find this immaterial, inasmuch as the DRB members were under the impression that he had. See *Hyundai Motor Manufacturing Alabama, LLC*, 366 NLRB No. 166, slip op. at 2 (2018) (finding unlawful discharge based on decisionmakers' belief employees engaged in protected concerted activity, "regardless of whether they actually did so") (citations omitted).

[14] Indeed, I find it more likely that, aware that they were treading on thin ice by disciplining an employee who had only just announced his intention to "go to the Union," Respondent's human resources representatives (none of whom testified) engineered the DRB to posture his discipline in as benevolent a manner as possible. This would explain Phillips signing Boey's suspension notice a day before attending a meeting only necessary when discharge was being considered.

insubordination, period. The DRB minutes, however, reflect other seemingly gratuitous, "bonus" rationales for the action, including Boey's "unsatisfactory quality or quantity of work" and prior disciplinary actions which simply did not exist. See *Con-Way Freight, Inc.*, 366 NLRB No. 183, slip op. at 3 (finding pretext based on unsupported claim in termination documents that employee "did not work well with customers and others"); see also *Shamrock Foods*, 366 NLRB No. 117, slip op. at 27–28, and cases cited there (employer's shifting, false, or exaggerated reasons for an adverse action are evidence of unlawful motive); *Inter-Disciplinary Advantage, Inc.*, 349 NLRB 480, 509 (2007) (finding that "an employer's shifting explanation for a discharge, or . . . its post hoc attempt to rationalize such a decision, are suggestive of a pretext"); *Harrison Steel Castings Co.*, 262 NLRB 450, 479 (1982) (finding that employer's defense "bore all the trappings of pretext" where it involved "exaggeration, implausibility, and contradiction"), enfd. in relevant part 728 F.2d 831 (7th Cir. 1984).

c. The General Counsel's alternate theory under the *Interboro* doctrine

The General Counsel argues that Boey also engaged in protected, concerted conduct by seeking to enforce his rights under the CBA. Specifically, it is claimed that, by refusing to complete the checklist, Boey in effect asserted rights under the parties collective bargaining agreement, rendering his conduct protected. I disagree.

The Board—by its *Interboro* doctrine—has long recognized that an individual employee's assertion of a right grounded in a collective-bargaining agreement constitutes concerted activity "and [is] therefore accorded the protection of § 7." See *NLRB v. City Disposal Systems*, 465 U.S. 822, 829 (1984) (citing *Interboro Contractors, Inc.*, 157 NLRB 1295, 1298 (1966), enfd. 388 F.2d 495 (2d Cir. 1967); *Bunney Bros. Construction Co.*, 139 NLRB 1516, 1519 (1962)). As one commentator has put it, the doctrine recognizes that the individual assertion of collectively bargained rights necessarily implicates the rights of all bargaining unit employees, thereby serving as "an extension of the concerted activity that originally gave rise to the agreement."[15] Thus, such conduct is properly viewed as aimed towards "mutual aid or protection," regardless of whether the employee has his own interests most immediately in mind. *NLRB v. City Disposal Systems*, 465 U.S. at 830.

It does not follow, however, that every action or complaint by an individual employee that purports to enforce a contractual right in fact qualifies as concerted conduct, and the doctrine should not be applied to elevate an employee's purely personal "griping" to protected status. *Id.* at 833 n. 10 (citation omitted). Instead, the employee's allegedly protected conduct must be based upon a reasonable and honest (albeit not necessarily correct) belief that there is a perceived violation of the contract,[16] and was reasonably perceived by the employer as such. Id. at 823–824. For the doctrine to apply to an employee's refusal to perform work, the General Counsel must demonstrate that:

[15] Raymond T. Mak, "City Disposal Systems and the Interboro Doctrine: The Evolution of the Requirement of 'Concerted Activity' under the National Labor Relations Act," 2 Hofstra Lab. L.J. 265, 291–292 (Spring 1985).

[16] See *NLRB v. H.C. Smith Constr. Co.*, 439 F.2d 1064 (9th Cir. 1971) (employee does not lose Section 7 protection as a matter of law simply because his understanding of the contract is mistaken); *John Sexton & Co.*, 217 NLRB 80 (1975) (ultimate merit of asserted contract claim is immaterial).

> the employee's statement or action is based on a reasonable and honest belief that he is being, or has been, asked to perform a task that he is not required to perform under his collective-bargaining agreement, and the statement or action is reasonably directed toward the enforcement of a collectively bargained right. . .

Id. at 837, 840 (truck driver's refusal to drive truck he reasonably and honestly perceived as unsafe amounted to an attempt to enforce contractual provision providing that drivers were permitted to refuse to drive an unsafe truck unless such refusal was unjustified).

I do not find Boey's refusal to execute the checklist to meet this standard. He indicated to management that he believed "PMO policy"—not a collectively bargained agreement—precluded him from completing the checklist, because it was an "unapproved document." It is true that, as a separate matter, two provisions of the CBA in fact obligate Respondent to provide employees notice of "new rules or changes in existing work rules" (Article 5.02) and "new or modified Company rules, regulations and policies" (Article 27.05). That said, there is simply no record evidence that, at the time he refused to complete the checklist task, he reasonably or honestly believed that, by doing so, he was sought to enforce either of these provisions, or that Respondent reasonably apprehended this. Put another way, Boey's conduct did not serve as an extension of the concerted activity that resulted in Articles 27.05 and 5.02, but rather amounted to his individual attempt to police whether Respondent was following its own internal, PMO policy. Deeming such conduct protected by Section 7 pursuant to *Interboro* is therefore inappropriate.

d. Respondent's *Wright Line* defense

Having found that the General Counsel has proven that Boey's union activity was a motivating factor for his suspension, the burden shifts to Respondent to offer a legitimate, nondiscriminatory explanation for its actions. As indicated earlier, I find that the record, as a whole, supports a finding that Boey's refusal to sign the logbook checklist was not, in fact, the reason Respondent suspended him. Rather, I believe that Respondent seized on Boey's standoff over the checklist as a handy pretext on which to discipline him for threatening to enlist the Union's assistance in challenging yet another management decision. As noted, both the timing of the DRB's deliberation (a day *after* Phillips had signed Boey's suspension notice) as well as the piling on of additional, unsupported reasons for the suspension (nonexistent prior discipline and claimed poor work quality or quantity) compel such a finding.[17] Taken together, these shifting and unsupported post hoc rationales for issuing Boey a suspension Phillips had inexplicably already signed support a finding that Respondent's proffered defense is pretextual; Respondent has thus failed by definition to show that it would have suspended Boey absent his protected conduct.

Furthermore, even were I to find Respondent's stated reason for suspending Boey (his failure to sign the logbook checklist) to be non-pretextual, I would further conclude that Respondent had

[17] The failure of current manager Ryan, who drafted the DRB meeting minutes, to testify and explain these apparently fabricated rationales is especially damaging to Respondent's claims that it suspended Boey for a lawful reason.

failed to meet its burden under *Wright Line* of establishing that it would have taken the same action against him in the absence of his union activity. Citing the industrial relations maxim, "obey now, grieve later," Respondent asserts that it was compelled to discipline Boey because he refused to sign the checklist. But at hearing, Respondent failed to adduce evidence to support this theory; there is simply no credible evidence that Boey's refusal to complete the checklist—as opposed to his announced intention to enlist the Union in challenging the requirement—was singularly on the minds of the decision makers, the majority of who failed to testify. What is evident is that Phillips—who initiated the disciplinary process—was clearly annoyed by what he considered Boey's latest "act of defiance" and that Boey's only prior "disobedience" had taken the form of repeatedly enlisting the Union's assistance to challenge management. Considering all the circumstances, I believe that Respondent has failed to prove that it would have suspended Boey in the absence of his actual (or perceived) union activity.

For the reasons set forth herein, I find that, based on the preponderance of the evidence, Respondent suspended Boey based on his union conduct.

2. *Weingarten* allegation

Under the Supreme Court's decision in *NLRB v. J. Weingarten*, 420 U.S. 251 (1975), an employee, upon request, is entitled to have union representation at an investigatory meeting in which he has reasonable grounds to fear that the meeting may result in disciplinary action being taken against him. The *Weingarten* right arises out of the protections inherent in Section 7 of the Act, but its exercise may not interfere with legitimate employer prerogatives. Id. at 256–258. Once an employee requests that a union representative be present during an investigatory interview, the employer may grant the request, discontinue the interview or offer the employee the choice of either continuing the interview without a representative or not having the interview at all. Id. at 258–259. In the present case, I find that, considering the circumstances, Boey had reasonable grounds to fear that discipline could result from the August 17 meeting, which took place following his refusal to comply with a management directive to complete the logbook checklist. Thus, the issue is whether, by providing steward Hanson to represent Boey during the meeting, Respondent satisfied its *Weingarten* obligation, or whether it was instead obligated to delay the meeting until Boey's preferred representative, Karelis, was available. I find the former to be the case.

An employee facing an investigatory interview must be given a reasonable amount of time to secure union representation; otherwise, the *Weingarten* right would be illusory. See, e.g., *Manhattan Beer Distributors, LLC*, 362 NLRB No. 192, slip op. at 1 (2015) (employer violated the Act by discharging employee for refusing to submit to drug test without affording him reasonable time to secure presence of a representative). Moreover, the designation of a specific representative, the Board has held, is generally a matter within the discretion of the union, not the employer:

> When two union officials are equally available to serve as a *Weingarten* representative…the decision as to who will serve is properly decided by the union officials, unless the employer can establish special circumstances.

New Jersey Bell Tel. Co., 308 NLRB 277, 307 (1992), enfd. 936 F.2d 144 (3d Cir. 1991). In particular, the Board has found that an employer violates the Act by insisting that an employee proceed with an interview with a less experienced or capable representative when a better-qualified representative is requested and available. See *Consolidation Coal*, 307 NLRB 976 (1992) (unlawful to require employee choose representative from inexperienced committeemen when experienced union representative available); *GHR Energy Corp.*, 294 NLRB 1011, 1042 (1989) (unlawful to force employee to proceed in interview with shop steward when international representative available), enfd. 924 F.2d 1055 (5th Cir. 1991).

A different scenario is presented, however, where there are *not* two "equally available" potential representatives, i.e., where the employee's preferred representative is not immediately available, but another representative is present and ready to go forward. In such circumstances, the Board balances the exercise of *Weingarten* rights against the employer's legitimate management prerogative to investigate employee misconduct, which has understandably led to case-specific results. For example, in *Coca-Cola Bottling Co. of Los Angeles*, 227 NLRB 1276 (1977), cited by Respondent, the Board found no violation where an employer denied an employee's request for a steward who was away on vacation, where another steward was available and the preferred steward's vacation schedule would have forced postponing the meeting from Friday to the following Monday. The Board held that:

> …there is nothing in the Supreme Court's opinion in *Weingarten* which indicates that an employer must postpone interviews with its employees because a particular union representative, here the shop steward, is unavailable either for personal or other reasons, where another representative is available whose presence could have been requested by the employee in the absent representative's place.

227 NLRB at 1276 (citation omitted). In so concluding, the Board stressed the admonition in *Weingarten* that the right to choose representation should not interfere with "legitimate employer prerogatives" such as conducting investigatory interviews without delay. Id.

Thus, under *Coca-Cola*, accommodating a 3-day delay occasioned by a preferred but absent steward was deemed outside the scope of the employer's *Weingarten* obligation. However, whether a given delay must be accommodated depends on the particular facts. For example, in *Las Palmas Med. Ctr.*, 358 NLRB 460 (2012), the employer violated the Act by refusing an employee's request for an absent representative, where that individual's work duties would have caused a 5 to 10–minute delay in commencing the investigatory meeting. In finding unlawful the employer's refusal to accommodate the preferred steward's schedule, the Board adopted the administrative law judge's finding that the short delay was not unreasonable. Id. at 468.

By contrast, the Board appears less inclined to countenance a delay occasioned by the absence of a preferred representative who does not typically represent employees such as the requesting employee. For example, in *Pacific Gas & Elec. Co.*, 253 NLRB 1143 (1981, also relied on by Respondent, the Board concluded that an employee did not have the right to her preferred representative, who worked at a facility 20 minutes away and did not usually represent employees at the interview location; in that case, the Board emphasized that the present, available representative was in fact the union's designated representative for the employee's own facility. See also *Buonadonna Shoprite*, 356 NLRB 857 (2011) (employer not required to delay

interview 4 days until employee's preferred representative was present, inasmuch as a shop steward who typically served as union representative was available). Such is particularly the case where the presently available representative was in fact appointed by the union for the purpose of representing employees on the shift during which the interview takes place. *Roadway Express, Inc.*, 246 NLRB 1127, 1129–1130 (1979).

The General Counsel relies primarily on *Smith's Food and Drug Centers, Inc.*, 361 NLRB 1216 (2014). Significantly, in that case, the General Counsel alleged that the respondent had violated an employee's *Weingarten* rights by two acts: (a) refusing her requested representative; and (b) refusing to allow her to speak to that representative via telephone. The Board agreed, finding that the employer had forced the employee, Pfeiffer, to proceed with an investigatory interview represented by a floor shop steward, instead of the facility's lead union representative, Sullivan. Sullivan was absent at the time of Pfeiffer's request, but had arranged to be in the vicinity and available by phone. After Pfeiffer asked to phone Sullivan and further said that she was expecting the call, the manager said no, and that she was entitled only to "the most available union person present and in that situation, it was the steward..." Id. at 1220.

The administrative law judge, applying the *New Jersey Bell Tel. Co*. rule that an employee must be allowed her choice of two "equally available" representatives, found that:

> While it is true that they did not know how long it would take Sullivan to get to the facility, and, therefore, for how long the interview would have to be delayed, the matter could easily have been resolved by a phone call to take Sullivan to determine her location at the time. They would have easily learned if Sullivan was readily available to come to the store to represent Pfeiffer, as she and Pfeifer testified, or whether she was unavailable, and if she was not readily available, the choice of [the shop steward] as her representative would have been permissible. However, [the manager] was unwilling to let her do that . . .

In affirming the judge, the Board agreed that the crux of the matter was that employee Pfeiffer had been denied the right to contact her representative, as she had requested. Id. at 1217 ("we affirm the judge's finding that the Respondent unlawfully denied Pfeifer her choice of union representative at the July 16 investigatory interview when it prevented Pfeifer from calling Sullivan").

Based on the facts presented in this case, I do not find that Respondent violated Boey's *Weingarten* rights. While Boey may have been more familiar with Karelis—as the steward primarily responsible for representing employees on his former (day) shift—Respondent fulfilled its obligation to Boey by providing Hansford, the designated night-shift steward who was immediately available. See *Buonadonna Shoprite*, supra (no violation where employee provided available, albeit not preferred, steward for meeting in which employee was asked to provide statement regarding alleged misconduct). Hansford's conduct in the meeting was consistent with effective representation; he demanded documents and attempted to resolve Boey's situation before it resulted in discipline. Nor is there any indication that Hansford was an inappropriate steward for Boey.

Nor do I agree with the General Counsel that the *Smith's Food and Drug* decision is controlling here. Key factors distinguish Boey's request from the one found to have been

unlawfully denied in that case. First, there is no evidence that Respondent believed Karelis—who regularly clocked out at least 30 minutes earlier—to have arranged with Boey to be readily available when it denied Boey's request, or that the two had in fact made such an arrangement. Nor did Boey did actually request an opportunity to contact Karelis; instead, he demanded that she be present before he was questioned. Thus, unlike the situation presented in *Smith's Food and Drug*, satisfying Boey's request would necessarily delay Respondent's investigation for an indeterminate period until Karelis could be tracked down or otherwise became available. I do not believe the *Weingarten* right was intended to delay indefinitely an employer's effort to investigate employee conduct, where another designated union steward is available.

Accordingly, I find that Respondent did not violate Boey's *Weingarten* rights as alleged and, therefore, recommend that paragraphs 6(b) through (d) of the complaint be dismissed.

Information Request Allegations

The General Counsel alleges that, between June 13 and July 24, 2017, Respondent unreasonably delayed in providing 2 categories of information requested by the Union: (a) copies of Respondent's policies for maintaining certain publications; and (b) a list of all current publications that are used by unit employees in Respondent's Davis-Monthan operation.[18] It is further alleged that, since June 13, Respondent has failed and refused to provide a requested "point of contact" for each such publication, as requested by the Union.[19]

A. Factual Background

1. The role of "tech data" in the Davis-Monthan operation

Respondent's mechanics are required, per FAA regulations, to ensure that they employ the methods, techniques and practices for performing maintenance set forth in each aircraft manufacturer's manual. These manuals, also referred to as "publications," contain technical data (or "tech data"), which includes technical and electrical schematics of the aircraft. (See R. Exh. 3; Tr. 414) The manner in which Respondent has maintained manufacturers' publications at Davis-Monthan has evolved with changing technology. As Wooley testified, until approximately 5 years ago, a mechanic would access tech data for a particular aircraft by referring to a paper manual kept updated by Respondent. The manuals were then transferred to a shared computer network drive maintained by Customs and Border Protection, which employees could access via stand-alone computer terminals at kiosks throughout the worksite. Updates to these computers were provided either via emails or thumb drives issued to individual employees. (Tr. 43–44, 425)

In early 2017, Respondent received notice from several airplane manufacturers that they would no longer provide email or thumb-drive updates to their manuals, but would be transitioning to an Internet-based system. Respondent responded by modifying its stand-alone

[18] While the complaint originally alleged that this information was requested on June 29, 2017, and was never provided by Respondent, this allegation was subsequently amended to state an unreasonable delay in providing this information from June 13 until July 24, 2017. See GC Exh. 1(f) at ¶ 3; Tr. 8–12.

[19] At hearing, I granted Counsel for the General Counsel's motion to add this refusal-to-provide allegation. See Tr. 8–12.

computer terminals to have online capability; under a new protocol, individual mechanics would be responsible for accessing the most up-to-date manual directly from any given manufacturers' website. The transition to this new protocol precipitated the Union's information requests at issue in this case. (Tr. 425–426)

2. Respondent's written policy regarding the maintenance of "tech data"

Respondent maintains numerous written procedures, including one entitled, "Technical Publication Library." Also identified as "Procedure 9002," this document sets forth the manner in which tech data is to be maintained and updated. Specifically, Procedure 9002 provides that Respondent will "maintain a master file of all publications held in support of aircraft and equipment." This listing is referred to as the Technical Publication Revision Master List, or simply the "Master List." At Davis-Monthan, the Master List is kept in a binder in the Quality Control department, where it is accessible to all employees. It is also available to employees online. (Tr. 66, 432–436; see GC Exhs. 6, 12(b))

Procedure 9002 also dictates each of Respondent's worksites, such as Davis-Monthan, keep "all publications, directives, and forms required to maintain their assigned aircraft and equipment" in a central location, in either hard copy or electronic format. Finally, Procedure 9002 provides that "[t]he on-site technical library is the responsibility of the Quality Control Supervisor or personnel assigned technical library and duties." Pursuant to this policy, Quality Control Supervisor Wooley is responsible for maintaining and updating the Technical Publications Library at Davis-Monthan. (GC Exh. 6; Tr. 414)

3. The Union's information requests regarding the maintenance and updating of tech data

At 11:23 a.m. on June 13, 2017,[20] Wooley sent an email to all mechanics and avionic technicians at Respondent's Davis-Monthan site announcing the transition. Explaining that most of its manufacturers were no longer sending updates via paper, compact disc or thumb drive, Wooley stated that the stand-alone computers could no longer be updated, but rather that employees would be responsible for accessing up-to-date tech data directly via each manufacturer's website. Attaching a list of websites, along with access instructions, he advised that unit employees were expected to be using the Internet-based manuals by June 30.[21] During the transition, he noted, employees using technical data from one of the stand-alone computers should consider it "for reference only" and instead rely on the information contained on the manufacturers' websites. (GC Exh. 7)

Shortly thereafter, at 12:06 p.m., Chief Shop Steward Karelis emailed Phillips, passing along a concern from a unit employee. Specifically, she reported that certain manuals on the stand-

[20] I do not agree with Respondent that Wooley's email was likely sent from Puerto Rico, causing it to arrive at 2:23 p.m. on the West Coast. While a notation on one of Phillips' emails that day indicated that it was sent from Puerto Rico, Wooley's email contains no such notation. See GC Exh. 7 & 8.

[21] Wooley's direct testimony makes clear that, contrary to Respondent's assertion in its post-hearing brief, this attachment did *not* list "a point of contact for various manufacturers." (See GC Exh. 7(b); Tr. 431, Q: So… This gave employees an opportunity to easily contact the manufacturer, correct, if they had a question about current data? A: Not so much. It gave them access to the manuals on that manufacturer's website").

alone computers had not been updated since January, and that employees had not been informed of this. Employees, she stated, had received "no notice of this change, and were not told where the correct manuals were." She ended her email with the following queries:

- Who is in charge of the publication library?
- Who is the point of contact to verify that the manuals/tech data are current?
- Do we have a master list of all the publications at the site with the current updates?

Citing safety concerns, she stated, "I believe this issue needs immediate attention." (GC Exh. 8)

Phillips responded minutes later, copying Wooley, whom he asked to answer Karelis' questions. However, within the hour,[22] Phillips again emailed Karelis (copying Wooley). This time, he stated that he had just learned about the transition from stand-alone to networked computers; he referred her again to Wooley "for further resolution." Shortly after 2:00 p.m., Karelis emailed Phillips again (copying Wooley). She began by thinking him for "looking into the issue" and stated that she had been unaware that the stand-alone computers were being upgraded.

On June 22, Karelis emailed Phillips and Wooley, passing along another employee complaint regarding the transition to Internet-based manuals. This employee apparently was concerned that Respondent was no longer updating the manuals accessed by the stand-alone computers and management was "looking the other way when we use the older versions." Philips responded, stating, "we'll resolve this in short order." The following day, Karelis emailed Phillips and Wooley again; referring to employees' continued reliance on outdated manuals on the shared drive, she questioned Respondent's decision to transition to Internet-based manuals, suggesting that employees needed training on the new policy and time to set up their new, website accounts. Finally, she stated, "[p]lease provide updated policies to the use of electronic manuals to the union." (GC Exh. 9)

On June 29—the day before Wooley's announced deadline for employees to register online to access Internet-based manuals—Karelis filed a Step One written grievance, stating:

> The Union requested a copy of company policy(s) regarding publications. Some employees have been made aware that are publications on the floor and in the Company's library [shared] drive are not current. The Company has not responded or provided the policy(s) requested.

She then detailed an incident in which an employee was unable to verify that a particular manual was current, and unable to access the current publication from a supervisor. She concluded by asking, "how do we verify for ourselves?" In the "Remedy Requested" portion of the grievance form, Karelis stated:

> Requesting copies of company policies for maintaining publications. If hourly employees are responsible for insuring company provided maintenance publications/guidelines are the most recent version,

[22] As noted, it appears that Phillips sent this email from Puerto Rico, as it contains a notation indicating as such and a time stamp of 9:38 a.m. See GC Exh. 8; Tr. 371–372.

> requesting a list of all current publications that are used at this site. In addition requesting Point of Contact for each publication so the employee can contact the manufacturer to verify the tech data is up-to-date.

(GC Exh. 10) Respondent's written grievance-answer attached no documents, but stated that the most up-to-date technical publications were available online, and that employees had been provided "on multiple occasions and through multiple avenues…the information required to retrieve the required publications." (Tr. 295; GC Exh. 10)

Karelis responded the following day, within the framework of her now-Step Two grievance, stating as follows:

> The Union understands that the Company believes there is no violation of the CBA, however, hourly employees are subjected to disciplinary actions if incorrect tech data is utilized. And I would like to remind the company that the safety issue was brought up earlier this year and the employee was completely ignored; employee insisted on filing this grievance and remain anonymous to avoid retaliation. Company's step 1 answer 'multipl[e] occasions and through multipl[e] avenues' is based on tribal knowledge.[23] Past practice, Quality Control would maintain publications and updates. There is no official training in reference publications. To this day, out dated publications are still available on the "S" drive. The Company has failed to provide company policies as requested.

(GC Exh. 10) As Karelis testified, at least one unit employee has in fact been disciplined for using an outdated technical publication; it is unclear, however, whether this occurred before or after the pendency of her information requests. (Tr. 297, 301–305)

According to Karelis, Respondent never provided the Union with a copy of its "company policies for maintaining publications," but she eventually obtained a copy of these procedures on her own. Nor did Respondent provide the Union with the requested "point of contact" for each publication. At hearing, the parties stipulated that, on July 24, Phillips emailed all unit employees the latest copy of its "Technical Publication Revision Master List." The General Counsel concedes that this list was responsive to the Union's request for a "list of all current publications that are used at this site." (Tr. 110, 111, 307–309, 448–339, 452; GC Ex. 1(a), 10, 12, 12(b))

B. Analysis

The General Counsel alleges that, between June 13 and July 24, 2017, Respondent unreasonably delayed in providing its policies regarding publications and its "master list" of publications, as requested by Karelis. It is further alleged that, since June 13, Respondent has failed and refused a point of contact for each technical publication.

[23] Karelis testified that the term "tribal knowledge" referred to unwritten policies and procedures used in the workplace. (Tr. 406–407)

When the certified bargaining agent of its employees requests information, an employer may fulfill its "bargaining obligation under Section 8(a)(5) of the Act" by providing relevant information. *Diponio Construction Co., Inc*., 357 NLRB 1206, 1217 (2011), citing *United Aircraft Corp.*, 192 NLRB 382, 389 (1971). This obligation "includes the duty 'to timely disclose that requested information does not exist.'" *Graymont PA, Inc*., 364 NLRB No. 37, slip op. at 9 (2016) (citing *Endo Painting Service, Inc.*, 360 NLRB No. 61, slip op. at 2 (2014)). Generally, information pertaining to terms and conditions of represented employees within the bargaining unit is presumptively relevant. *CVS Albany, LLC*, 364 NLRB No. 122, slip op. at 2 (2016); see also *Country Ford Truck, Inc. v. NLRB*, 229 F.3d 1184, 1191–1192 (D.C. Cir. 2000), enfg. 330 NLRB 328 (1999) (citation omitted). Once an initial showing of relevance is made, an employer has a burden of proof to demonstrate the lack of relevance or give sufficient reason(s) "'as to why he cannot, in good faith, supply such information.'" *ATV/Vancom of Nevada Ltd. Partnership*, 326 NLRB 1432, 1434 (1998), citing *San Diego Newspaper Guild Local 95 v. NLRB*, 548 F.2d 863 (9th Cir. 1997).

"The duty to furnish information requires a reasonable good-faith effort to respond to the request as promptly as circumstances allow," and it is well established that "[a]n unreasonable delay in furnishing relevant requested information is as much a violation of Section 8(a)(5) as a refusal to furnish the information at all." *Linwood Care Center*, 367 NLRB No. 14, slip op. at 5 (2018) (citations omitted). Absent evidence of a justification, a delay in providing relevant information "will constitute a violation of Section 8(a)(5) inasmuch '[a]s the Union was entitled to the information at the time it made its initial request, [and] it was Respondent's duty to furnish it as promptly as possible.'" Id. (citing *Pennco, Inc.*, 212 NLRB 677, 678 (1974)).

In this case, there is no question that the requested information relates to the working conditions of unit employees, deeming it relevant. Respondent in fact appears to concede this, insofar as it admits that "the three items requested relate to how an employee can access current tech data, which is a necessary function for an aircraft mechanic or avionics technician under the applicable [Federal Aviation Regulations]." (R. Br. at 25) Instead, Respondent asserts that, by Phillips and Wooley's communications with Karelis (as well as the remaining unit employees), Respondent timely responded to each request. I cannot agree.

In large part, Respondent's assertion to have responded swiftly to Karelis' request is based on its underlying claim that Wooley's June 13, 2017 email explaining to the workforce the transition to an Internet-based document management system was sent *after* Karelis' email and therefore served as a response to it. As noted, I do not interpret the record evidence in this manner. In any event, it is beyond dispute that neither Wooley's email nor the attachment to it transmitted documents that clearly would have been responsive to Karelis' requests, including Respondent's written policy regarding publications (Procedure 9002) and its most recent "master list" of publications. Nor is there any indication that Respondent made a good-faith effort to retrieve the requested information. Thus, to the extent that these requests were straight-forward and sought basic, simple information easily retrievable by Respondent, I find that its nearly 6-week delay in responding to the requests was unreasonable and violated Section 8(a)(5). See, e.g., *Linwood Care Center*, 367 NLRB No. 14, slip op. at 5 (finding 6-week delay unreasonable); *Postal Service*, 308 NLRB 547, 551 (1992) (finding 4-weeks unreasonable); *Capitol Steel & Iron*

Co., 317 NLRB 809, 813 (1995) (finding 2-week delay unreasonable), enfd. 89 F.3d 692 (10th Cir. 1996).[24]

Finally, by Wooley's own admission, Respondent never provided the Union with a list of contacts for each manufacturer as Karelis requested. In its defense, Respondent raises no issue of confidentiality regarding its customer contacts, but rather argues that providing a single contact at each manufacturer "would create confusion," as this individual would potentially be inundated with calls from multiple employees. (R. Br. at 27) Respondent's speculation that it would somehow be unable to control the manner in which individual employees contacted customers to ensure up-to-date tech data, however, is simply not a basis for refusing to provide otherwise relevant information. Respondent advances an alternate argument, asserting "there is simply not one person sitting at a desk were at each manufacturer for employees to call directly, since there is different equipment in various regions." (R. Br. at 27) To the extent Respondent claims that it is unable to identify a contact for each customer, Respondent was obligated to inform the Union of this fact; its failure to do so violated the Act. See *Graymont PA, Inc.*, 364 NLRB No. 37, supra.

Accordingly, I find merit to the General Counsel's information request allegations.

CONCLUSIONS OF LAW

1. Respondent PAE Aviation and Technical Services, LLC (Respondent) is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Association of Machinists and Aerospace Workers, Local Lodge 2949, AFL–CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act with 9(a) status under the Act.

3. The following employees of Respondent (Unit) constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time aircraft maintenance and avionic technicians located at Davis-Monthan Air Force Base, Arizona; excluding all office clerk employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

4. Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to supply a manufacturer-point of contact for each publication that is used by unit employees in

[24] To the extent Respondent argues that Karelis could have accessed its policies and procedures, as well as the master list of publications, via Respondent's intranet site, this defense has been squarely rejected by the Board. See *King Soopers*, *Inc.*, 344 NLRB 842, 845 (2005) ("a union's ability to obtain requested information elsewhere does not excuse an employer's obligation to provide the requested information"), enfd. 476 F.3d 843 (10th Cir. 2007). This is particularly appropriate where, as here, at least one obvious purpose behind the Union's request was to determine whether Respondent had revised its policies and/or practices in connection with its transition to Internet-based tech data. *Kroger Co.*, 226 NLRB 512, 513–514 (1976) ("[t]he union is entitled to an accurate and authoritative statement of facts which only the employer is in a position to make").

Respondent's Davis-Monthan operation, so as to enable the Union to discharge its function as statutory representative of the Unit employees or, to the extent such information did not exist, failing to so inform the Union.

5. Respondent has violated Section 8(a)(5) and (1) of the Act by unreasonably delaying in supplying the following information to the Union, so as to enable the Union to discharge its function as statutory representative of the Unit employees:

(a) copies of Respondent's policies for maintaining publications; and
(b) a list of all current publications that are used by unit employees in Respondent's Davis-Monthan operation.

6. Respondent has violated Section 8(a)(3) and (1) of the Act by suspending employee Jonathan Boey from August 20–24, 2017, for engaging in union and other protected conduct.

7. The foregoing unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices in violation of Sections 8(a)(5), (3) and (1) of the Act, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Therefore, I shall recommend that Respondent, having discriminatorily suspended employee Jonathan Boey, should be required to restore the status quo ante by rescinding his suspension and removing all references to it from Respondent's files. Further, I shall recommend that Respondent should make Boey whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). Respondent should be ordered to compensate the above-named employees for the adverse tax consequences, if any, of receiving lump sum backpay awards and to file a report with the Social Security Administration allocating backpay awards to the appropriate calendar quarters for each employee. *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014).

Finally, I shall further recommend that Respondent, having unlawfully failed and refused to provide relevant information to the Union that is relevant and necessary to its performance of its duties as exclusive collective-bargaining representative and/or failed to inform the Union that certain requested information did not exist, should be ordered to supply the requested information, set forth above, to the Union, or to the extent such information does not exist, make such representation to the Union.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[25]

ORDER

Respondent PAE Aviation and Technical Services LLC, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Suspending its employees for engaging in union activities;

(b) Failing or unreasonably delaying to provide information to International Association of Machinists and Aerospace Workers, Local Lodge 2949, AFL-CIO (the Union) that is relevant and necessary to the Union's performance of its duties as the exclusive collective-bargaining representative of its employees in the following appropriate unit:

> All full-time aircraft maintenance and avionic technicians located at Davis-Monthan Air Force Base, Arizona; excluding all office clerk employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union, in a timely and complete manner, a manufacturer-point of contact for each publication that is used by unit employees in Respondent's Davis-Monthan operation, or, to the extent such information does not exist, so inform the Union.

(b) Rescind Jonathan Boey's discriminatory suspension and make him whole for any loss of earnings and other benefits suffered as a result of his discriminatory suspension, in the manner set forth in the remedy section of this decision.

(c) Compensate Jonathan Boey for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 28, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating his backpay award to the appropriate calendar year(s).

(d) Within 14 days' of the date of the Board's Order, remove from its files all references to Jonathan Boey's August 20–24, 2017 discriminatory suspension, and, notify him in writing that this has been done and that the suspension will not be used against him in any way;

[25] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(e) Preserve and, within 14 days of a request following the Board's Order, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at Respondent's facility at Davis-Monthan Airforce Base in Arizona copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed its operations at Davis-Monthan Airforce Base, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at its Davis-Monthan Airforce Base operation at any time since June 13, 2017; and

(g) Within 21 days after service by the Region, file with the Regional Director for Region 28 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

It is further ordered that the complaint allegations are dismissed insofar as they allege violations of the Act not specifically found.

Dated: Washington, D.C. November 9, 2018

Mara-Louise Anzalone
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefits and protection
Choose not to engage in any of these protected activities

WE WILL NOT do anything that interferes with these rights. Specifically:

WE WILL NOT fail or unreasonably delay to provide information to International Association of Machinists and Aerospace Workers, Local Lodge 2949, AFL-CIO (the Union) that is relevant and necessary to the Union's performance of its duties as the exclusive collective-bargaining representative of its employees in the following appropriate unit (the unit):

> All full-time aircraft maintenance and avionic technicians located at Davis-Monthan Air Force Base, Arizona; excluding all office clerk employees, professional employees, managerial employees, guards, and supervisors as defined in the Act.

WE WILL NOT discipline, suspend or otherwise discriminate against any of you for supporting the Union or because you join and assist the Union and engage in concerted activities or to discourage you from engaging in these activities.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL furnish to the Union, in a timely and complete manner, a manufacturer-point of contact for each publication that is used by unit employees in Respondent's Davis-Monthan operation. To the extent such information does not exist, WE WILL inform the Union of that fact.

WE WILL remove from our files all references to Jonathan Boey's August 20–24, 2017 discriminatory suspension and WE WILL notify him in writing that this has been done and that the suspension will not be used against him in any way.

PAE AVIATION AND TECHNICAL SERVICES LLC

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

2600 North Central Avenue, Suite 1400
Phoenix, AZ 85004-3099
Hours: 8:15 a.m. to 4:45 p.m.
(602) 640-2160

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/28-CA-203755 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (602) 416-4755.